IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

OP.No. 4392 of 2002(W)

PETITIONER:

P.M.BALACHANDRAN,PREVENTIVE OFFICER (RETD.) CHENGOT HOUSE,KOTAMPARAMBA P.O., CALICUT-8

BY ADV. SRI.V.RAJENDRAN

RESPONDENTS:
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1. **THE JOINT EXCISE COMMISSIONER, THIRUVANANTHAPURAM.**
2. **THE DEPUTY COMMISSIONER OF EXCISE, NORTHERN ZONE,KOZHIKODE.**
3. **THE ASSISTANT EXCISE COMMISSIONER, R.R.L&A.,KOZHIKODE.**
4. **STATE OF KERALA,REPRESENTED BY THE SECRETARY TO GOVERNMENT ,TAXES DEPARTMENT, GOVERNMENT SECRETARIATE,THIRUVANANTHAPURAM.**

BY SPL.GOVT. PLEADER SRI. N. MANOJ KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NOS.7892/02, 4543/04, 54066/02 IN

OP. NO.4392/2002

DISMISSED

03.07.2007 SD/- K.BALAKRISHNAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE STATEMENT DT. 18.2.99 ON BEHALF OF 1ST RESPONDENT IN OP. 19952/98.

EXT.P2:- COPY OF THE JUDGMENT DT.11.6.99 IN OP. NO.19952/98.

EXT.P3:- COPY OF THE JUDGMENT DT. 31.8.99 IN W.A. NO.1757/99.

EXT.P4:- COPY OF THE ORDER DT.25.10.99 OF THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE LETTER DT. 31.5.2000 OF THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P6:- COPY OF THE REPRESENTATION DT. 19.6.2000 OF THE PETITIONER.

EXT.P7:- COPY OF THE ORDER DT.29.9.2000 OF THE 1ST RESPONDENT.

EXT.P8:- COPY OF THE ORDER DT.29.7.2000 OF THE 3RD RESPONDENT.

EXT.P9:- COPY OF THE ORDER DT. 29.7.2000 OF THE 3RD RESPONDENT.

EXT.P10:- COPY OF THE GO(P) NO.509/91/FIN . DT. 24.9.91 .

EXT.P11:- COPY OF THE LETTER DT. 23.6.01 OF THE 1ST RESPONDENT TO THE PETITIONER'S COUNSEL.

EXT.P12:- COPY OF THE LETTER DT. 5.12.01 OF THE 1ST RESPONDENT TO THE PETITIONER'S COUNSEL.

E.XT.P13:- COPY OF THE LETTER OF THE 1ST RESPONDENT DT. 22.1.98.

E.XT.P14:- COPY OF THE LETTER OF THE 2ND RESPONDENT DT. 20.10.98.

EXT.P15:- COPY OF THE G.O.(RT) NO.600/99/TD DT. 19.8.99.

EXT.P16:- COPY OF THE REPRESENTATION OF THE PETITIONER BEFORE THE 2ND RESPONDENT DT. 9.11.98.

EXT.P17:- COPY OF THE STATEMENT SHOWING THE PETITIONER'S PAY FIXATION PREPARED BY THE PETITIONER.

tss /TRUE COPY/

K.BALAKRISHNAN NAIR, J.

O.P. No.4392 of 2002 W

Dated this the 3rd day of July, 2007.

JUDGMENT

The petitioner entered service as an Excise Guard on 16.4.1968. He was promoted as Preventive Officer in July 1992 and retired from that post on superannuation on 28.2.1999. He applied for medical leave on 24.12.1992 and on the expiry of that leave, rejoined duty on 4.10.1994. But the leave application was not considered in time and therefore, the increments were not released after 1992. So, he filed O.P.No.19952/98 before this court and in the writ petition, the respondents filed Ext.P1 statement, in which it was admitted that the files relating to the leave application and connected matters were not available. This court disposed of the said original petition by Ext.P2 judgment dated 11.6.1999 directing the petitioner to submit fresh application for 'leave without medical certificate'. The competent authority was directed to consider the same and also to consider thereafter the question of grant of increments. Finally, the leave was sanctioned on 19.8.1999. Increments were sanctioned as per Ext.P4 dated

25.10.1999. There was a statement in Ext.P1 that the petitioner did not submit his option in time. According to the petitioner, he had already submitted the option. Later, as directed by the first respondent by Ext.P5 dated 31.5.2000, the petitioner submitted option by Ext.P6 on 19.6.2000. But later, his pay was re-fixed as per Exts.P8 and P9 proceedings, ignoring the option submitted by him. The petitioner asserts, pursuant to Ext.P10 Government Order, he exercised option on 5.12.1991. Later, in reply to a lawyer notice, the petitioner's counsel was told by Ext.P11 that the fixation of pay has not been finalised and the matter will be considered later. But, without any further verification Ext.P12 communication has been issued stating that the fixation done in Exts.P8 and P9 was proper. This writ petition is filed challenging Exts.P8, P9 and P12.

2. The respondents have filed a counter reiterating the stand taken in Ext.P12.

3. In the meantime O.P.No.23427/98 filed by the petitioner has been allowed by this court by directing to

promote him as Preventive Officer with effect from 1.7.1981. It is ordered that he will not be entitled to get arrears of pay and allowances. But, his salary shall be revised and re-fixed and retirement benefits shall be re-worked and re-fixed. In view of this position, there will be fresh fixation of his pay. As a result of court direction or retrospective promotion, pay scale is changed re-option is admissible as stated in Communication No.5341/PRU-1/2006/Fin dated 20.3.2006. It reads as follows:

> ***"As per the conditions stipulated in Para 15 of Annexure -III to G.O.(P) 3000/98/Fin dated 25.11.1998, re-option is inadmissible for past Pay Revisions except in those cases involving specific Court Direction/retrospective promotion. Hence, Government regrets its inability to accept your request to issue General Orders allowing an opportunity to Government employees to exercise re-option for 1992 and 1997 Pay Revisions and related time bound grade promotion."***

4. In view of the above development, the grievance regarding the omission of the respondents to accept his re-option no longer survives. The petitioner is entitled to re-option at the time of re-fixation of his pay in the light of the judgment mentioned above. The petitioner shall be given a chance of re-option at the time of re-fixation of his pay.

Writ petition is disposed of as above.

Sd/-

(K.BALAKRISHNAN NAIR)
JUDGE

sk/

//true copy//

P.S. To Judge

K.BALAKRISHNAN NAIR, J.

O.P. No.4392 of 2002 W

JUDGMENT

3rd day of July, 2007.